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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,870	12/02/2003	Randall S. Hickie	82021-0033	1625

24633 7590 12/22/2006  
HOGAN & HARTSON LLP  
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555 THIRTEENTH STREET, N.W.  
WASHINGTON, DC 20004

EXAMINER
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NATNITHADHA, NAVIN

ART UNIT	PAPER NUMBER
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3735

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

# Office Action Summary

Application No.

10/724,870

Applicant(s)

HICKLE, RANDALL S.

Examiner

Navin Natnithadha

Art Unit

3735

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 10 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 16-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 16-27 are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>20040804;20050309</u>   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

1. Claims 16-27 have been withdrawn. Claims 1-15 are pending.

### ***Election/Restrictions***

2. Claims 16-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 10 October 2006.

Applicant's election with traverse of Group I, claims 1-15, in the reply filed on 10 October 2006 is acknowledged. The traversal is on the ground(s) that the stated utility is not sufficient to establish that the stated subcombinations do not overlap or have separate utility, and that a combined search and examination of Groups I, II, and II would not pose a serious burden to the Office. This is not found persuasive because each of Groups I, II, and II are directed to distinct inventions: Group I states a respiratory monitoring system having structure of a patient interface, a respiratory monitor, and an electronic controller; Group II states a method for implementing respiratory monitoring having process steps directed to conducting queries of whether pressure sensed by the sensor is one of negative press and positive pressure; and Group III states a method for employing respiratory monitoring having alarm responses having process steps directed to establishing a three different alarm parameters and

querying whether the data is outside the alarm parameters. Since these groups are not obvious variants of each other and are different inventive concepts, examination of the groups would require entirely separate searches and consideration of entirely different references with respect to the above subject matter. Thus, the examination of all of the groups would be burdensome. Furthermore, Applicant has not clearly admitted, or provided evidence, on record that they are obvious variants.

The requirement is still deemed proper and is therefore made FINAL.

3. This application contains claims 16-27 drawn to an invention nonelected with traverse filed on 10 October 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schnitzer et al, US 5,692,497 A ("Schnitzer"), in view of Derrick, US 5,046,491 A ("Derrick").

Claims 1-15: Schnitzer teaches a respiratory monitoring system 10 comprising: a patient interface (see schematic in fig. 2) comprising a "patient insert" (i.e. endotracheal

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tube, ETT, or reverse thrust catheter, RTC; see col. 7, ll. 35-37) 12 and a visual display 132, the nasal cannula 12 comprising at least a first nasal capnography port 19 and a first pressure sensor port 64 (see fig. 1B); a respiratory monitor (flow/pressure bi-direct alert, which detects an incorrect flow and/or an undesirable pressure) 18, comprising a pressure sensor; and an electronic controller (central processor or microprocessor 130) 22; wherein the electronic controller manages a drug delivery device, such as a sedation and analgesia system (see col. 2, ll. 29-35, and col. 4, ll. 34-40); user interface allowing a user to enter inputs corresponding to thresholds relating to inhalation or exhalation of the patient (see col. 8, ll. 54-59; wherein pressure waveform analysis and segmentation is used to identify one of respiratory effort and effect (see col. 8, ll. 49-67); wherein alarm conditions are determined based certain criteria including relation to predetermined thresholds (see col. 9, ll. 25-36); LEDs (see col. 3, ll. 52-59); wherein the visual display 132 is updated in real time (see col. 4, ll. 24-34).

Although Schnitzer does not explicitly teach a nasal cannula, an ear mount and a support band, Schnitzer teaches that the "subsystem 136 is connected for fluid communication with the patient 138, for example, through pneumatic tube (e.g., an ETT) and an RTC (not shown)" (see col. 7, ll. 35-37). However, Derrick teaches an apparatus for gas analysis comprising a nasal cannula 10, an ear mount/support band 28 that is adapted for placement on both ears and provides stability (see figs. 1 and 2).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Schnitzer to have a nasal cannula assembly because the

scope of Schnitzer's invention encompasses other types of fluid communication with patients other than ETT and RTC, such as nasal cannula.

**Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Navin Natnithithadha whose telephone number is (571) 272-4732. The examiner can normally be reached on Monday-Friday, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, II can be reached on (571) 272-4730. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Navin Natnithithadha  
Patent Examiner  
Art Unit 3735

NN  
12/21/2007